REMARKS

The present application has been reviewed in light of the Office Action dated October 11, 2005. Claims 1 to 42 are the pending claims being examined in the application, of which Claims 1, 6, 7, 14, 15, 22, 23, 28, 29, 34, 35 and 41 are independent. Claims 1 to 42 are being amended herein. Reconsideration and further examination are respectfully requested.

Claims 12 and 20 are rejected under 112, second paragraph, as allegedly being indefinite. Without conceding the correctness of the rejection, Claims 12 and 20 are amended herein. Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

Claims 1 to 42 are rejected under 35 U.S.C. § 103(a) over U.S. Patent No. 6,192,340 (Abecassis), U.S. Patent No. 5,926,207 (Vaughan), web page printouts from www.real.com (hereinafter referred to as the "RealNetworks reference") and from www.musicmatch.com (hereinafter referred to as the "MusicMatch reference"). Reconsideration and withdrawal of the rejection are respectfully requested, for at least the following reasons.

Claim 1 recites a method for providing a data stream according to preferences of a community. A first community having members is provided, each member of the community having corresponding preferences regarding data stream content. The members of the first community are determined to have at least one preference in common. Characteristics of the preferences of the first community's members are determined, and an individual data stream is biased according to the determined characteristics of the first community members' preferences. The individual data stream has more content that the community likes and less content that the community dislikes.

Abecassis is not seen to teach or even to suggest the above-identified features, particularly as regards a community of members, each of which has corresponding preferences

regarding data stream content, the members of the community are determined to have at least one preference in common, determining characteristics of the community member's corresponding preferences, and biasing an individual data stream according to the determined characteristics of the community member's preferences, so that the individual data stream is biased according to the community member's preferences, and so that the individual data stream has more content that the first community likes and less content that the first community dislikes.

Nothing in the portions of Abecassis cited in the Office Action, and indeed nothing in Abecassis as a whole, corresponds to a member community, let alone a determined community of members determined to have at least one of their respective preferences in common. In addition, nothing in Abecassis discloses or even suggests determining characteristics of the preferences of the respective preferences of the community members, and/or biasing a data stream according to determined characteristics of the community members' preferences. Furthermore, nothing in Abecassis discloses or even suggests biasing a data stream such that the data stream has more content that a determined community likes and less content that a determined community dislikes.

Rather and as is supported by the portions of Abecassis cited in the Office Action, Abecassis focuses on the individual user, and on playing music for the individual user from the user's own music collection based on user's individual preferences. Nothing in Abecassis describes determining commonality between users' preferences to determine a community whose members have at least one of their preferences in common. It follows then that Abecassis cannot determine characteristics of preferences of a determined member community and/or bias a data stream in accordance with such determined characteristics so that the data stream is biased in accordance with the community members' preferences.

While the Office Action identifies one section of Abecassis, i.e., col. 17, lines 45 to 48, which mentions a plurality of users, this portion of Abecassis concerns an information provider examining requirements of a plurality of users so that the information provider can allocate its information gathering resources to gather informational items. Abecassis does not determine commonality of preferences of these plurality of users. Rather, this portion of Abecassis is simply examining each of the individual user's preferences to determine requirements that each user needs in order to allocate information gathering resources to gather the information required by each individual user. Nothing in the cited portion discloses or even suggests a community whose members are determined to have at least one of their preferences in common. Further, nothing in the cited portion discloses or even suggest biasing an individual data stream in accordance with characteristics determined from the preferences of community members, such that the individual data stream is biased according to the determined characteristics of the preferences, , and biased according to the community members' preferences.

At page 5, the Office Action states that the MusicMatch Jukebox and RealJukebox references describe "radio-on-demand stations", and contends that a number of users choosing from "available radio-on-demand stations" forms a community of individuals with similar musical preferences. The conclusions reached in the Office Action presupposes features that simply are not disclosed, suggested or even supported by the applied art. As is stated in Abecassis, MusicMatch Jukebox and RealJukebox are software media players used to play music. While the MusicMatch Jukebox reference describes that a user can access a radio station using the player software, this cannot be said to disclose or suggest determining a community whose members are determined to have at least one of their preferences in common. Selection of

a station is certainly not the same as a determined member community, and.or a determined member community whose members determined to have at least one preference in common.

Should the Examiner maintain the current grounds for rejection, Applicants respectfully request the Examiner to specifically point out, by column/page and line number, the portions of the MusicMatch and RealJukebox references (or the other applied art for that matter) which describe a determined member community, the community having members determined to have at least one of their preferences in common.

The Office Action, at page 5, cites col. 15, lines 27 to 44 of Abecassis and contends that the categories of music, such as classical music, mentioned therein read on a community. However, a music category is clearly not the same as a community whose members are determined to have at least one of their preferences in common. The cited portion of Abecassis describes an individual user's preferences for a particular category of music, which further supports Applicants' position that the focus of Abecassis is solely on the individual, and nothing in Abecassis, and in particular col. 15, lines 27 to 44, describes, suggests or in any way discloses a determined community whose members are determined to have at least one preference in common.

At page 6, the Office Action relies on Vaughn as allegedly disclosing a community. However, Vaughn describes a system which allows a user to define behavior for a broadcast channel independent of other broadcast channels. Vaughn describes a database which maintains a master list of broadcast channels, with each channel having associated programmable data, which allow a user to define the behavior of a broadcast channel independent of the other broadcast channels. At col. 2, lines 24 to 27, Vaughn describes that the programmable data can

allow the user to have a particular logo associated with a broadcast, such that the logo would be displayed when the user's television was tuned to the specific broadcast channel.

While Vaughn indicates that the master broadcast channel list can be subdivided into lists based on channel type, a listing of channels (either mater or otherwise) is certainly not the same as a community with members each of which have associated preferences regarding data stream content, and/or a community of members determined to have at least one of their respective preferences in common.

Nothing in Vaughn discloses or even suggests providing data streams according to member preferences in a community, each of the members of which have been determined to have at least one of their preferences in common, determining characteristics of the community members' preferences, and/or biasing an individual data stream in accordance with the determined characteristics, such that the individual data stream is biased according to the community members' preferences.

Furthermore, there is no showing in the Office Action of a suggestion, teaching, or motivation that would have led a person of ordinary skill in the art to modify the teachings of the applied references in a manner that would have resulted in the claimed invention.

The Examiner is respectfully reminded that she is required to place herself in the shoes of a person of ordinary skill in the art at the time the invention was made. See In re McLaughlin, 443 F.2d 1392 (CCPA 1971). It is this hindsight to which the McLaughlin case refers, which hindsight, in the context of McLaughlin, limits the Examiner only to that which was known to the person of ordinary skill at the pertinent time to which the rejection applies. As the Courts have amply set forth subsequent to McLaughlin, the Applicants' invention may not be used as the hindsight roadmap with which the Examiner winds his way through the prior art for

identifying features and then, using the teachings of the claimed invention, "use that which the inventor has taught against its teacher" to provide the missing motivation to combine the references to yield the claimed invention. In re Lee, 277 F.3d 1338, 1344, citing W.L. Gore v. Garlock, Inc., 721 F.2d 1540, 1553 (Fed. Cir. 1993). As the Federal Circuit stated in In re Dembiczak, 175 F.3d 994, 999 (Fed. Cir. 1999);

> Our case law makes clear that the best defense against the subtle but powerful attraction of a hindsight-based obviousness analysis is rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references. See e.g., C.R. Bard, Inc. v. M3 Sys., 157 F.3d 1340, 1352, 48 USPQ2d 1225, 1232 (Fed. Cir. 1998) (describing "teaching or suggestion or motivation [to combine]" as an "essential evidentiary component of an obviousness holding"); In re Rouffet, 149 F.3d 1350, 1359,47 USQP2d 1453, 1459 (Fed. Cir. 1998) ("the Board must identify specifically...the reasons one of ordinary skill in the art would have been motivated to select the references and combine them"); In re Fritch, 972 F.2d 1260, 1265, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992) (examiner can satisfy burden of obvionsess in light of combination "only by showing some objective teaching [leading to the combination]"); In re Fine, 837 F.2d 1071, 1075, 5 USPQ2d 1596, 1600 (Fed Cir. 1998) (evidence of teaching or suggestion "essential" to avoid hindsight)...Combining prior art references without evidence of such a suggestion, teaching or motivation simply takes the inventor's disclosure as a blueprint for piecing together the prior art to defeat patentability – the essence of hindsight. See e.g., Interconnect Planning Corp., v. Feil,, 774 F.2d 1132, 1138, 227 USPQ 543, 547 (Fed. Cir. 1985) ("The invention must be viewed not with the blueprint drawn by the inventor, but in the state of the art that existed at the time.")

There is no showing by the Office Action of a teaching, suggestion or motivation to modify that would have led a person of ordinary skill in the art to modify teachings of the applied references so as to yield the claimed invention. Without such a showing, it can only be

said that the disclosure of the present application is being used as a blueprint to modify the teachings of the applied art to reject the claims of the present invention.

For at least the reasons discussed above, the applied art, individually or in any permissible combination (if one even exists, a fact in no way conceded by Applicants), fails to disclose or suggest the claimed invention. Claim 1 is therefore believed to be in condition for allowance. In addition, for at least the same reasons, the other independent claims are believed to be in condition for allowance.

The other claims are each dependent from the independent claims discussed above and are therefore believed patentable for at least the same reasons. Because each dependent claim is also deemed to define an additional aspect of the invention, however, the individual consideration of each on its own merits is respectfully requested.

In view of the foregoing, the entire application is believed to be in condition for allowance, and such action is respectfully requested at the Examiner's earliest convenience.

The Applicant respectfully requests that a timely Notice of Allowance therefore be issued in this case. Should matters remain which the Examiner believes could be resolved in a further telephone interview, the Examiner is requested to telephone the Applicant's undersigned attorney.

In this regard, Applicant's undersigned attorney may be reached by phone in California (Pacific Time) at (714) 708-6500. All correspondence should continue to be directed to the below-listed address.

The Commissioner is hereby authorized to charge any required fee in connection with the submission of this paper, any additional fees which may be required, now or in the future, or credit any overpayment to Account No. 50-2638. Please ensure that the Attorney Docket

Number is referred when charging any payments or credits for this case.

Respectfully submitted,

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